

1 KENNETH S. GAINES, ESQ. SBN 049045
ken@gaineslawfirm.com

2 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com

3 **GAINES & GAINES, APLC**
21550 Oxnard Street, Suite 980
4 Woodland Hills, CA 91367
Telephone: (818) 703-8985
5 Facsimile: (818) 703-8984

6 SCOTT A. MILLER, ESQ. SBN 230322
scott.miller@smillerlawoffices.com
7 **LAW OFFICES OF SCOTT A. MILLER, APC**
16133 Ventura Blvd., Ste. 645
8 Encino, CA 91436
Telephone: (818) 788-8081
9 Facsimile: (818) 788-8080

10 STEVEN L. MILLER, ESQ. SBN 106023
stevenlmiller@sbcglobal.net
11 **STEVEN L. MILLER, APLC**
16133 Ventura Blvd., Ste. 645
12 Encino, CA 91436
Telephone: (818) 986-8900
13 Facsimile: (818) 990-7900

14 Attorneys for Plaintiff Kambiz Batmanghelich
and Class Counsel

15 **UNITED STATES DISTRICT COURT**

16 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

17 KAMBIZ BATMANGHELICH, on
18 behalf of himself and all others
19 similarly situated, and on behalf of the
20 general public,

21 Plaintiffs,

22 v.

23 SIRIUS XM RADIO, INC., a
24 Delaware corporation, STREAM
INTERNATIONAL INC., a Delaware
25 corporation, and DOES 3 through 50,
inclusive,

26 Defendants.
27
28

CASE NO.: CV 09-9190 VBF (JCx)

**DECLARATION OF DANIEL F.
GAINES IN SUPPORT OF
PLAINTIFF'S RESPONSE TO
OBJECTIONS TO CLASS ACTION
SETTLEMENT**

DATE: September 12, 2011

TIME: 1:30 P.M.

COURTROOM: 9

JUDGE: Hon. Valerie Baker Fairbank

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of
3 California. I am a shareholder of Gaines & Gaines, APLC, co-counsel for Plaintiff
4 Kambiz Batmanghelich and Class Counsel in this action. I have personal knowledge
5 of the facts set forth herein and if called as a witness to testify to them, could and
6 would do so competently.

7 2. Attached hereto as Exhibit "A" is a true and correct copy of an objection
8 mailed to my office by Mr. Edmund Bandas.

9 I declare, under penalty of perjury, under the laws of the State of California and
10 the United States of America, that the foregoing is true and correct. Executed on this
11 22nd day of August, 2011 at Woodland Hills, California.

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13 /s/ Daniel F. Gaines
14 DANIEL F. GAINES
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PROOF OF SERVICE

UNITED STATES DISTRICT COURT OF CALIFORNIA

CENTRAL DISTRICT

CASE NAME: KAMBIZ BATMANGHELICH, on behalf of himself and all others similarly situated, and on behalf of the general public vs. SIRIUS XM RADIO, INC., a Delaware corporation, STREAM INTERNATIONAL INC., a Delaware corporation, and DOES 3 through 50, inclusive, CASE NUMBER: CV 09-9190 VBF(JCx)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21550 Oxnard Street, Suite 980, Woodland Hills, California 91367

On August 22, 2011, I served the foregoing document(s) described as:

DECLARATION OF DANIEL F. GAINES IN SUPPORT OF PLAINTIFF'S RESPONSE TO OBJECTIONS TO CLASS ACTION SETTLEMENT

in this action by placing a true copy thereof in a sealed envelope addressed as follows:

Darrell Palmer
Janine R. Menhennet
Law Offices of Darrell Palmer
603 North Highway 101, Ste A
Solana Beach, California 92075
Attorneys for Objector Michelle Melton

Edmund F. Bandas
200 Lake Road, # 1008
Belton, Texas 76513
Objector in pro per

☐ **BY NOTICE OF ELECTRONIC FILING.** The above-listed counsel have consented to electronic service and have been automatically served by the Notice of Electronic Filing, which is automatically generated by CM/ECF at the time said document was filed, and which constitutes service pursuant to FRCP 5(b)(2)(D).

☐ **FEDERAL.** I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 22, 2011, at Woodland Hills, California.

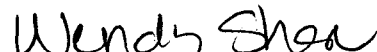

Wendy A. Shore

Exhibit “A”

EDMUND F. BANDAS
200 Lake Road, #1008
Belton, Texas 76513

United States District Court
312 N. Spring St.
Attention: Room G-19, Civil Intake Section
Los Angeles, CA 90012

Re: Case No. CV-09-9190 VBF (JCx)
Kambiz Batmanghelich et. al. v. Sirius XM Radio Inc. AND Stream International,
Inc.; United States District Court for the Central District of California

Dear Court Clerk:

My name is Edmund F. Bandas. My current address is 200 Lake Road, #1008, Belton, Texas 76513.

I am a class member and I have already submitted my claim form. My Claim No. is 00001610 and my Control No. is 1337393349.

Objection is made to the proposed settlement as follows:

The class definition is impossibly vague, and will result in uncertainty as to who is within and without the settlement class. The problem is the language. "You are a Class Member and the Settlement could affect your legal rights if you were in California, Florida, Maryland, Nevada, or New Hampshire[.]" What does it mean to be "in" one of these Covered States? Physically located there? Possessing a phone with an area code there? Owning a phone with an area code there? A resident there?

Moreover, the class definition is fail-safe in that it defines the class in terms of an ultimate issue on the merits, namely that the caller was not informed the call was being recorded.

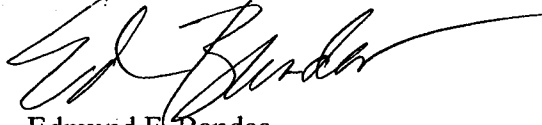
The settlement also unfairly discriminates against class members who are not "in California" by providing substantially less compensation to them under the settlement. It may well be that persons "in California" have stronger claims, but if that is the case, then procedural protections such as separate counsel and sub-classes should have been instituted to protect the class members not "in California." This has created a substantial conflict of interest for class counsel.

Aug. 4, 2011

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Attorneys' fees are excessive under a lodestar or percentage of recovery analysis, and class counsel is not entitled to fees due to the conflict of interest set forth above.

Sincerely,



Edmund F. Bendas

cc: **Via Federal Express**
Daniel F. Gaines, Esq.
Kenneth S. Gaines, Esq.
Gaines & Gaines, APLC
21550 Oxnard Street, Ste. 980
Woodland Hills, California 91367
Class Counsel

Via Federal Express
Edward D. Totino, Esq.
DLA Piper LLP (US)
1999 Avenue of the Stars, Ste. 400
Los Angeles, California 90067
Attorneys for Stream International, Inc.

Via Federal Express
Trenton H. Norris, Esq.
Arnold & Porter, LLP
One Embarcadero Center, 22nd Floor
San Francisco, California 94111
Attorneys for Sirius XM Radio, Inc.